



2021 ANNUAL REPORT
OF THE ND LONG-TERM CARE
OMBUDSMAN PROGRAM

This annual report is compiled and distributed to comply with federal and state law requirements.

The Office of the State Long-Term Care Ombudsman is a programmatically independent advocacy service located within the North Dakota Department of Human Services, Aging Services Division. Points of view, opinions or positions of the Ombudsmen do not necessarily represent the view, positions, or policy of the North Dakota Department of Human Services [see 45 CFR part 1324.11 (e)(8)].

Please direct any comments or discussion about the contents of the report or issues affecting the residents of long-term care homes to the State Long-Term Care Ombudsman.

Prepared by:

Karla Backman, *State Long-Term Care Ombudsman*
701.328.4617 or kbackman@nd.gov

Data used is from the FFY 2020 NORS report
(October 1, 2019 – September 30, 2020)

Dear Residents and Stakeholders of Long-Term Care,

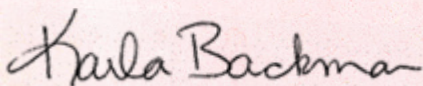
The Long-Term Care Ombudsman Program was founded on the ombudsmen being resident-directed advocates. Person-centered practice is a concept that mimics resident directed and has become a focus within the North Dakota Department of Human Services in its provision of services. The following are statements made during a webinar on "Building Foundations for Person-Centered Practices."

- People should determine their own destiny and control their own lives;
- We need to listen to individuals to support them to make their own choices;
- Historically, government wants to help but gets in the way because it focuses on programs, not people and that as professionals we need to learn to let go and not think we know what is best for everyone;
- Michael Smull, the primary presenter and an expert on person-centered practice, said when doing person-centered planning, it can't be about just offering what exists but pressing the system and government to create what is needed.
- There were also three panelists that spoke of their experiences, and all three talked about the importance of having a voice and identifying what they wanted.

Each of these should be considered when reflecting on the response to the COVID-19 pandemic imposed on long-term care facility residents. The input of the residents was not sought, and they were not given choices on how to deal with the pandemic.

A current challenge is to not segregate communities based upon a person's choice to have or to decline the vaccination. For example, some facilities have established separate dining areas for those who are vaccinated and those who are not. There are many implications of such segregation, and even though it is done "based on the science," there needs to be caution to not frame it to incentivize the choice to be vaccinated. Each resident has the right to choose his or her medical treatment – which includes whether or not to have a COVID-19 vaccination.

For residents in long-term care homes, it has been a difficult path since March 2020, due to the COVID-19 pandemic. Currently, the lockdown on visitation and communal activities has been relaxed, and there is forward action to return to pre-pandemic "normalcy" for residents. Initially, it was hoped that the consistent application of infection control practices would re-open visitation and activities. Then hope was placed on the COVID-19 vaccine being the necessary tool for residents to regain their waived rights and have full practice of person-centeredness. Unfortunately, neither of these have provided full resolution. On behalf of residents of long-term care homes, the hope continues for the return to normalcy and a full restoration of their resident rights.



Karla Backman, LBSW

State Long-Term Care Ombudsman

This report is being submitted in honor of the 900 statewide deaths within long-term care attributed to COVID-19 as of June 15, 2021.

SYSTEMS ADVOCACY

This past North Dakota legislative session, Senate Bill 2145, an Essential Caregiver Bill, was introduced by Senators K. Roers, Mathern and Patten and Representatives Keiser, Rohr and Westlind.

The idea of an essential caregiver is that an essential caregiver would be allowed to visit even if the facility had a lockdown on visitation. There was impassioned testimony provided by family members frustrated and angry at the prolonged separation from their loved ones living in long-term care facilities. I also testified on behalf of the residents in hopes of this law being a step towards restoring to residents the right to choose while mitigating the risk involved to the extent possible.

SB 2145, the Essential Caregiver Bill was signed by the governor into law on April 30, 2021. The next step is for the department, working jointly with the state department of health, the state long-term care ombudsman, residents and tenants, families of residents and tenants and long-term care facility representatives to establish basic protocols.

- A national essential caregiver's bill has also been introduced in Congress. Below is a link to the press release. [Read more >](#)
- The National Association of State Long-Term Care Ombudsman Programs (NASOP) advocated with the Centers for Medicare & Medicaid Services (CMS) on issues related to the reopening of nursing homes.
- Consumer Voice, along with partner advocates, sent a letter calling on the CMS to fully restore the visitation rights of nursing home residents. [Read more >](#)

It was a year of persistent advocacy without much resolution. Federal CMS and state leaders were cautious to adjust the guidelines for visitation and communal activities. The touted principle of being person-centered was often overridden by the sole focus on protection from COVID-19 in writing regulations and guidance.

VISITS WITH RESIDENTS

Contact between the ombudsmen and the residents over the past year was a combination of phone contacts, virtual visits, and in-person visits. The in-person visits often were in a visitation area (safe space) – not the resident’s room. Each facility had different protocol and policies for visits. This necessitated the ombudsmen to spend numerous hours calling each facility to get the requirements for visits and the most recent COVID-19 testing results to know if a visit could be allowed.

The ombudsmen are pleased they can resume face-to-face visits with residents. Most facilities and residents are also glad to have the ombudsmen back visiting. The ombudsmen are now reporting that the complaints are mostly the usual ones they heard pre-pandemic. The ombudsmen continue to do their best to resolve issues and concerns through advocacy and provide education and problem solving to anyone who requests it.

Below is a chart showing the number of visits to residents in facilities throughout Federal Fiscal Year 2020. The long-term care ombudsman federal data report defines two levels of care. These are:

- Nursing facilities (For N.D., this includes nursing homes and swing bed facilities.)
- Residential care communities (For N.D., this includes basic care and assisted living.)

| | Nursing Facilities | Residential Care Communities | |
|---|--------------------|------------------------------|---|
| Number of facilities that received one or more visits | 114 | 138 | * Routine access means the residents in a facility have been visited at least once per quarter. There are 79 nursing homes, 34 swing bed facilities, 64 basic care facilities, and 75 assisted living facilities. So the goal is a total number of 252. This goal was not achieved this past year due to the lockdowns. |
| Number of visits for all facilities | 295 | 296 | |
| Number of facilities that received routine access* visits | - | - | |

The Aging Services Division has enlisted the ombudsmen to assist with in-reach presentations. These are mandated by the Department of Justice Settlement with North Dakota to take place in all nursing homes. They are being done in teams with the Regional Aging Services Program Administrators (RASPA). The goal is to inform the residents of the services available to enable them to live in a home and community-based setting. They also are informed they can request a review of those services to determine if that is a viable choice for them.

DATA REPORT

DATA IS FROM THE FFY 2020 FEDERAL OAAPS/NORS REPORT

The Definition of Complaint as per Administration for Community Living/Administration on Aging – Office of Long-Term Care Ombudsman Programs: An expression of dissatisfaction or concern brought to, or initiated by, the Ombudsman program, which requires Ombudsman program investigation and resolution on behalf of one or more residents of a long-term care facility.

COMPLAINT PROCESSING

When the long-term care ombudsmen work through complaints, it is essentially a problem-solving process. Our goal is to use advocacy (communication) to resolve the issue at the lowest level possible i.e., to not have to involve regulatory agencies, facility governing boards or corporate offices, etc. The concern may be brought forward by anyone, but for the ombudsmen to proceed with active advocacy the resident/resident representative must give consent for action to be taken. The ombudsman also verifies that the concern exists. Then a plan is developed with the resident, i.e., what do they consider a successful resolution to the issue, who do they want involved in the resolution, etc. The ombudsman and resident talk through possible resolution actions and outcomes. Remember, the ombudsmen are resident-directed advocates. Residents may not view a concern the same way as the original complainant, or they may choose not to pursue any resolution due to concern of retaliation. Also, many residents don't want to be labeled as troublemakers. We educate that the freedom to speak up and ask for change is protected in state and federal law. NDCC 50-10.2 states "the right of each resident, the resident's immediate family, any existing legal guardian of the resident, friends, facility staff, and other persons to present complaints on the behalf of the resident to the facility's staff, the facility's administrator, governmental officials, or to any other person, without fear of reprisal, interference, coercion, discrimination, or restraint."

FFY 2020 COMPLAINT DATA

212 TOTAL CASES INVESTIGATED AND CLOSED IN FFY 2020
THESE CASES HAD 301 SEPARATE COMPLAINTS.

The numbers of cases and the number of complaints dropped by over 100 from the last federal fiscal year. This is attributed to the lack of direct contact with residents by families and ombudsmen. Much of the ombudsmen work this past year was listening to the stories of the effects of COVID-19 restrictions and educating on current regulations and guidance.

The tables on the next pages show the number of complaints per major complaint category (categories established by the Administration for Community Living/Administration on Aging – Office of Long-Term Care Ombudsman Programs) received for cases closed in FFY 2020. The data reporting system for the Long-Term Care Ombudsman Program was revamped for this year with the complaint codes reduced from 119 to 58.

| Major Complaint Category | Number of Complaints | | Minor Complaint Categories |
|--|----------------------|------------------------------|---|
| | Nursing Facilities | Residential Care Communities | |
| Abuse, Gross Neglect, Exploitation | 16 | 12 | Physical, psychological (9), and sexual abuse • Financial exploitation • Gross neglect (9) |
| Access to Information | 8 | 1 | Access to information and records • Language and communication barrier • Willful interference |
| Admission, Transfer, Discharge, Eviction | 10 | 16 | Admission • Appeal Process • Discharge or eviction (20) • Room issues |
| Autonomy, Choice, Rights | 46 | 16 | Choice in healthcare • Live in less restrictive setting • Dignity and respect • Privacy • Response to complaints • Retaliation • Visitors (19) • Resident or family council • Other rights and preference |
| Financial, Property | 8 | 7 | Billing/charges • Personal property (8) |
| Care | 62 | 24 | Accidents or falls • Response to requests for assistance (14) • Care planning • Medications • Personal hygiene • Access to health related services • Symptoms unattended • Incontinence care • Assistive devices or equipment • Rehabilitation services • Physical restraint • Chemical restraint |
| Activities and Community Integration and Social Services | 4 | 12 | Activities (4) • Transportation • Conflict resolution • Social services |
| Dietary | 5 | 8 | Food services (4) • Dining and hydration • Therapeutic or special diet |
| Environment | 14 | 7 | Environment (8) • Building structure • Supplies, storage and furnishings • Accessibility • Housekeeping, laundry and pest abatement |
| Facility Policies, Procedures, and Practices | 12 | 6 | Administrative oversight • Fiscal Management • Staffing (10) |
| Complaints about an Outside Agency | 2 | - | Regulatory System • Medicaid • Managed care • Medicare • Veterans affairs • Private insurance |
| System and Others (non-facility) | 10 | 5 | Resident representative or family conflict (11) • Services from outside provider • Request to transition to community setting |
| Totals | 197 | 104 | |

*The numbered parentheses in minor complaint categories show the category having the most complaints for that major complaint category. 7

The data below shows 70% of the complaints were verified. Also 70% of the complaints were partially or fully resolved to the satisfaction of the resident, resident representative or complainant.

| Complaint Verifications | | | | |
|--------------------------------|--------------------|------------------------------|----------------|-----------------------|
| Verification Status | Nursing Facilities | Residential Care Communities | Other Settings | Total by Verification |
| Verified | 141 | 70 | - | 211 |
| Not verified | 56 | 34 | - | 90 |

| Complaint Dispositions | | | | |
|---|--------------------|------------------------------|----------------|----------------------|
| Disposition Outcome | Nursing Facilities | Residential Care Communities | Other Settings | Total by Disposition |
| Partially or fully resolved to the satisfaction of the resident, resident representative or complainant | 137 | 75 | - | 212 |
| Withdrawn or no action needed by the resident, resident representative or complainant | 12 | 15 | - | 27 |
| Not resolved to the satisfaction of the resident, resident representative or complainant | 48 | 14 | - | 62 |

CONSULTATIONS/INFORMATION & REFERRAL

CONSULTATIONS TO FACILITY STAFF (EITHER IN PERSON, BY PHONE, OR BY E-MAIL)

683 consultations were documented with an average of 27 minutes per consultation. This year many included the time ombudsmen spent listening to the reports of the impact of the pandemic on the facilities, staff and residents.

Most frequently requested topics:

1. Transfer/discharge
2. Resident rights
3. Health and safety issues

Information and consultation to individuals (residents, family members, community persons, etc.)

There were 666 consultations with individuals with an average of 29 minutes per consultation. Again, many of these included time spent actively listening to the stories being shared about the impact of the pandemic.

Most frequently discussed topics:

1. Resident rights
2. Transfer/discharge
3. Health and safety issues

For FFY 2020 there was a significant increase in information and consultations. Our federal authority, Administration on Community Living, directed at the start of the pandemic to document the phone and virtual contacts with residents as information and consultation. Pre-pandemic this information was gathered during resident visits at the facilities.

Please note the top three topics for each group are the same just in a different order.

THE AMAZING OMBUDSMEN

(AKA REPRESENTATIVES OF THE OFFICE)

The following are the staff of the Long-Term Care Ombudsman Program in North Dakota.

- Sandra Brandvold – local ombudsman based in Devils Lake
- Laura Fischer – local ombudsman based in Fargo
- Mark Jesser – local ombudsman based in Fargo
- Shannon Nieuwsma – local ombudsman based in Bismarck
- Peggy Kelly – local ombudsman based in Dickinson (.75 FTE)
- Debbie Kraft – local ombudsman based in Minot
- Karla Backman - State Long Term Care Ombudsman (statewide program administrator)

Currently there are also three volunteer ombudsmen. There was no active recruitment of volunteers throughout the past year due to the restrictions imposed for COVID-19.

This is a cohesive team that supports each other. The work of an ombudsman is not easy. There is a lot of information to know and there is an expectation we will not only know it but be experts. There are often situations for which there is no “good” resolution, and we must then work towards the best person-centered resolution possible. There are many times when individuals are not happy with our role as advocates and ask, “What good are you?” However, as shown by the 70% resolution of partially or fully resolved complaints to the satisfaction of the resident, resident representative or complainant, we do a lot of good work as advocates.

Richard Mollett, NY Long Term Care Community Coalition, made the following comment about the need for the presence of the ombudsmen in long-term care facilities during the pandemic visitation lockdown.

“The fact that ombudsmen have a more frequent presence in facilities and are authorized to take and record complaints, and advocate for residents, means that their work is essential. When they are not there to handle problems, those problems are likely to persist unabated. When problems are not recorded, there is not even a public record that they happened. Worse than suffering in silence, the **resident’s suffering has been effectively silenced** and there is **not** a way for anyone to know what may be going on in a facility.”

The following is the contact information for the ombudsmen.

Phone: 701.328.4617 or 855.462.5465 option 3 • 711 (TTY)

E-mail: dhsagingombud@nd.gov

Fax: 701.328.0389

Online complaint form: **SFN 1829**

Most of the important things in the world have been accomplished by people who have kept on trying when there seemed to be no hope at all. - Dale Carnegie

If you have questions, comments, or want to discuss the contents of this report, please contact the State Long-Term Care Ombudsman. Please also send referrals for individual advocacy on issues affecting the residents of long-term care homes to the ombudsmen.

Karla Backman, State Long-Term Care Ombudsman
701.328.4617 or kbackman@nd.gov

